S.B.CIVIL MISC. APPEAL NO.852/2001

Representative Aam Janta, Village Berdo Ka Bas & Anr.
vs.
Gramin Vikas Vigyan Samiti, Jelu Gagadi & Ors.

DATE OF JUDGMENT ::: 22.2.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. JR Beniwal a/w Mr.BR Choudhary, for the appellants.
Mr. CR Jakhar, for the respondents no.1 to 3.
Mr. SN Tiwari, for the respondent no.4 State.

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Heard learned counsel for the parties.

The plaintiffs/appellants are aggrieved against the order of the trial court dated 28.8.2001 by which their injunction application filed under Order 39 Rules 1 and 2 CPC was dismissed.

Brief facts of the case are that the plaintiffs/ appellants filed a suit for cancellation of sale deed executed by the respondent no.1 society in favour of the respondent no.3 on the ground that the suit property was purchased by the respondent no.1 society from the money taken from the public of village with a clear understanding that the property shall be used for public purpose. The society sold this property to the private individual – respondent no.3, therefore, the sale deed is illegal and

void. The plaintiffs claimed that the suit property is in possession of the public at large and the respondents have no right to use the property in dispute. The plaintiffs also produced few receipts evidencing the payment of donation for which coupons were issued by the respondent no.1 society.

Learned counsel for the respondents submits that the respondent society is engaged in large public utility activities and for upliftment of villagers, the society has many activities. The property was purchased by the society and the land was mutated in the name of respondent society. Since the society stopped its working from this suit land, therefore, the land was of no use to the society and hence, the same was sold to the respondent no.3. It is further submitted that since the society was doing the work of public utility, therefore, the society persons were living and utilising the property but when the purpose fulfilled and the society could do the activities in the village, therefore, they sold the property to the respondent no.3. IN view of the above, since the plaintiffs have no title in the property nor they have any right in the suit property, therefore, they were not entitled to any injunction. It is also submitted that the respondent society was in possession and now the respondent no.3 is in possession of the suit property but because of the stay order passed by this Court on 15.9.2001, the respondent no.3 is also not cultivating the land. According to the learned counsel for the respondents, the trial court considered the merits of

the case and found that no prima-facie case is made out by the plaintiffs for grant of injunction, therefore, the appeal may be dismissed.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

So far as the respondent no.1 society is concerned, it is the case of the society that the society is engaged in public utility work in the village and purchased the property for their use. The property was sold to the respondent no.3. Learned counsel for the appellants submits that the suit was filed in the year 1988 and the order of status quo was in force till it was vacated by the impugned order dated 28.8.2001 but the same order of status quo continued from 15.9.2001, when this Court ordered both the parties to maintain status quo.

In view of the above fact, this appeal can be decided by directing the court below to decide the suit itself within a period of six months with a direction to the parties to maintain status quo till the decision of suit because of the simple reason that the status quo order which continued from 1988 by the order of trial court till 28.8.2001 and thereafter from 15.9.2001 by the order of this Court and more than four years have already passed from the order of this Court and both the parties are maintaining status quo and now, it will not be just and proper to permit the parties to alter the position in any

manner.

It is settled law that status quo as it was in existence from the date of filing of the suit should be preserved if there are rival claims having some foundation which shows prima-facie case. In this case, the land which was used by the respondent no.1 was for the benefit and purpose of objects of the society when it was purchased by the society and the society's total contention is that their activities are for public utilities, therefore, at this stage, none of the parties can be permitted to alter the position.

In view of the above, the appeal is partly allowed and both the parties are directed to maintain status quo till the decision of suit. The trial court is directed to decide the suit expeditiously preferably within a period of six months.

Copy of this order be sent to the trial court.

(PRAKASH TATIA), J.

S.Phophaliya